

AMENDED IN SENATE APRIL 6, 2005

AMENDED IN SENATE MARCH 17, 2005

**SENATE BILL**

**No. 157**

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**Introduced by Senator Ackerman**

February 8, 2005

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An act to amend Section 19008 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 157, as amended, Ackerman. Taxation: installment payments agreements: business taxpayers.

Existing law allows an individual taxpayer to enter into an installment payment agreement with the Franchise Tax Board for the payment of the amount of the taxpayer's tax liability, but permits all taxpayers, including business entities, to enter into installment agreements, regarding the payment of tax liability, during the tax amnesty period from February 1, 2005, until March 31, 2005. Under existing law, certain nonindividual taxpayers are subject to a 50% amnesty penalty, as provided, if they have a balance due after March 31, 2005, and have not entered into installment payment agreements with the Franchise Tax Board by that time, even though they might have informally agreed to pay the amount of the tax owed.

This bill would expand the category of taxpayers that are allowed to enter into installment payment agreements with the Franchise Tax Board to include nonindividual taxpayers. This bill would also require that certain informal payment plan arrangements between the Franchise Tax Board and nonindividual taxpayers be treated as installment payment agreements for amnesty purposes, and would

postpone until July 1, 2005, the imposition of the specialized tax services fee, as provided, for specified installment agreements.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19008 of the Revenue and Taxation  
2 Code is amended to read:  
3 19008. (a) The Franchise Tax Board may, in cases of  
4 financial hardship, as determined by the Franchise Tax Board,  
5 allow a taxpayer to enter into installment payment agreements  
6 with the Franchise Tax Board to ~~pay~~ *make full or partial payment*  
7 *of taxes due*, plus applicable interest and penalties over the life of  
8 the installment period. Failure by a taxpayer to comply fully with  
9 the terms of the installment payment agreement shall render the  
10 agreement null and void, unless the Franchise Tax Board  
11 determines that the failure was due to a reasonable cause, and the  
12 total amount of tax, interest, and all penalties shall be  
13 immediately due and payable.  
14 (b) In the case of a liability for tax of an individual under Part  
15 10 (commencing with Section 17001) or this part, the Franchise  
16 Tax Board shall enter into an agreement to accept the *full*  
17 payment of the tax in installments if, as of the date the individual  
18 offers to enter into the agreement, all of the following apply:  
19 (1) The aggregate amount of the liability (determined without  
20 regard to interest, penalties, additions to the tax and additional  
21 amounts) does not exceed ten thousand dollars (\$10,000).  
22 (2) The taxpayer (and, if the liability relates to a joint return,  
23 the taxpayer's spouse) has not during any of the preceding five  
24 taxable years done any of the following:  
25 (A) Failed to file any return of tax imposed under Part 10  
26 (commencing with Section 17001) or this part.  
27 (B) Failed to pay any tax required to be shown on the return.  
28 (C) Entered into an installment agreement under this section  
29 for payment of any tax imposed by Part 10 (commencing with  
30 Section 17001) or this part.

1 (3) The Franchise Tax Board determines that the taxpayer is  
2 financially unable to pay the liability in full when due, and the  
3 taxpayer submits any information as the Franchise Tax Board  
4 may require to make this determination.

5 (4) The agreement requires full payment of the liability within  
6 three years.

7 (5) The taxpayer agrees to comply with the provisions of this  
8 part and Part 10 (commencing with Section 17001) for the period  
9 the agreement is in effect.

10 (c) Except in any case where the Franchise Tax Board finds  
11 collection of the tax to which an installment payment agreement  
12 relates to be in jeopardy, or there is a mutual consent to  
13 terminate, alter, or modify the agreement, the agreement shall not  
14 be considered null and void, or otherwise terminated, unless both  
15 of the following occur:

16 (1) A notice of termination is provided to the taxpayer not  
17 later than 30 days before the date of termination.

18 (2) The notice includes an explanation of why the Franchise  
19 Tax Board intends to terminate the agreement.

20 (d) No levy may be issued on the property or rights to property  
21 of any person with respect to any unpaid tax:

22 (1) During the period that an offer by the taxpayer for an  
23 installment agreement under this section for payment of the  
24 unpaid tax is pending with the Franchise Tax Board.

25 (2) If the offer is rejected by the Franchise Tax Board, during  
26 the 30 days thereafter and, if a request for review of the rejection  
27 is filed within the 30 days, during the period that the review is  
28 pending.

29 (3) During the period that the installment agreement for  
30 payment of the unpaid tax is in effect.

31 (4) If the agreement is terminated by the Franchise Tax Board,  
32 during the 30 days thereafter (and, if a request for review of the  
33 termination is filed within the 30 days, during the period that the  
34 review is pending).

35 (5) This subdivision shall not apply with respect to any of the  
36 following:

37 (A) Any unpaid tax if either of the following occurs:

38 (i) The taxpayer files a written notice with the Franchise Tax  
39 Board that waives the restriction imposed by this subdivision on  
40 levy with respect to the tax.

(ii) The Franchise Tax Board finds that the collection of that tax is in jeopardy.

(B) Any levy that was first issued before the date that the applicable proceeding under this subdivision commenced.

(C) At the discretion of the Franchise Tax Board, any unpaid tax for which the taxpayer makes an offer of an installment agreement subsequent to a rejection of an offer of an installment agreement with respect to that unpaid tax (or to any review thereof).

(D) The period of limitation under Section 19371 shall be suspended for the period during which the Franchise Tax Board is prohibited under this subdivision from making a levy.

(e) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review for the rejection of the offer of an installment payment and for installment payment agreements that are rendered null and void, or otherwise terminated under this section, for taxpayers that request that review. This administrative review shall not be subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code. Unless review is requested by the taxpayer within 30 days of the date of rejection of the offer of an installment agreement or termination of the installment agreement, this administrative review shall not stay collection of the tax to which the installment payment agreement relates.

*(f) In the case of an agreement entered into by the Franchise Tax Board under subdivision (a) for partial payment of a tax liability, the Franchise Tax Board shall review the agreement at least once every two years.*

~~(f)~~

(g) (1) In the case of any taxpayer that is making payments to the Franchise Tax Board under an informal payment arrangement that was in existence prior to the effective date of the act adding this subdivision, that informal payment arrangement, for purposes of this section, shall be treated as an installment payment agreement that was entered into on the later of the following:

(A) January 1, 2005.

(B) The date on which the arrangement was established by the Franchise Tax Board.

1 (2) In any case where the date determined under the rules of  
2 paragraph (1) is a date prior to February 1, 2005, the amount due  
3 under the informal payment arrangement as of February 1, 2005,  
4 shall be treated as an installment payment agreement amount as  
5 of the start of the amnesty program within the meaning of  
6 Section 19738.

7 (3) Section 19591 does not apply to either of the following:

8 (A) Informal payment arrangements treated as installment  
9 payment agreements under paragraph (1).

10 (B) Installment payment agreements authorized by the  
11 amendments made by the act adding this subdivision that were  
12 entered into prior to July 1, 2005, or the effective date of the act  
13 adding this subdivision, whichever occurs later.

14 SEC. 2. This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety  
16 within the meaning of Article IV of the Constitution and shall go  
17 into immediate effect. The facts constituting the necessity are:

18 To provide relief to certain taxpayers that would otherwise be  
19 unreasonably penalized under the provisions of the amnesty  
20 legislation, it is necessary that this act take effect immediately.